IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 95 of 1988

For Approval and Signature:
HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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RR GAMAR - Appellant(s)
Versus
SN VALAND & OTHERS & 3 - Defendant(s)

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Appearance :
MS MAYA DESAI for Appellant,
MR RAJNI H MEHTA for Defendant(s) : 1, 3,
None for Defendant(s) : 2, 4,

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 03/08/2007

ORAL JUDGMENT

1. The appellant – claimant, being aggrieved by the award dtd.8/4/1982 passed by the Motor Accident Claim Tribunal (Main), Banaskantha at Palanpur in Motor Accident Claim Petition No.74 of 1981, is before this Court with a

submission that the tribunal erred in awarding only a sum of Rs.26,500=00 against claim of Rs.45,000=00.

2. In absence of Cross Objections or Counter Appeal, it is not necessary for this Court to enter into the facts relating to the accident and the liability of the parties.

3. From the evidence available on the records, it would clearly appear that as a result of the accident, the appellant had suffered number of injuries. It is a case of permanent deformity of left side of the lower limb. Dr.A.A. Patel in his statement, certifying correctness of his certificate Exh.60, had clearly stated that there was shortening of leg by 1” with 3/4” calf wasting. He also stated before the tribunal that 10% movement, flexion and extension is limited at knee joint, there was pain in the ankle joint and there was limitation of dorsiflexion of last 20%. In the Cross-examination, he also stated that there was a case of mal-union of tibia and fibula and that the deformity was to the extent of 20%. The tribunal held that the claimant was earning Rs.10=00 per day or Rs.300 per month, therefore, the loss of the future earning would be 20% of Rs.300=00 equivalent to Rs.60 per month or Rs.720=00 per year.

4. In the opinion of this Court, such a mechanical approach cannot be applied to the facts of the real life. When a man suffers shortening of the leg, then, that shortening of the leg, in fact, would deprive him of the regular labour work. People are always interested in paying full money to the labour to have the best return of their money. If such a man, who has shortening of the leg by 1", is available in the market at Rs.8=00 in comparison to a well bodied man for Rs.10=00, then, people would prefer to pay Rs.10=00 to able bodied labour. In the opinion of this Court, the tribunal was unjustified in holding that because the deformity was to the extent of 20% only, the future loss of income would be 20% only.

5. Taking into consideration the nature of the injuries suffered by the claimant and the loss which he is likely to suffer in future, I hold that the appellant – claimant would be entitled to an additional amount of Rs.18,500=00.

6. The appeal is allowed. The appellant – claimant would be entitled to an additional amount of Rs.18,500=00 with 6% interest from the date of the claim petition till realisation.

The respondent Nos.1 to 3 would be jointly and severally liable to satisfy the award.

(R.S. GARG, J.)

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